

SENATE BILL 335

D4

11r0501

By: **Senators Kelley and Forehand**

Introduced and read first time: February 2, 2011

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Family Law – Permanency Planning and Guardianship Review Hearings**

3 FOR the purpose of establishing certain methods by which the juvenile court, in
4 certain permanency planning and guardianship review hearings, may satisfy
5 the requirement that the court consult on the record with the child; and
6 generally relating to permanency planning and guardianship review hearings.

7 BY repealing and reenacting, without amendments,
8 Article – Courts and Judicial Proceedings
9 Section 3–823(b), (c), and (h)(1)
10 Annotated Code of Maryland
11 (2006 Replacement Volume and 2010 Supplement)

12 BY repealing and reenacting, with amendments,
13 Article – Courts and Judicial Proceedings
14 Section 3–823(k)
15 Annotated Code of Maryland
16 (2006 Replacement Volume and 2010 Supplement)

17 BY repealing and reenacting, without amendments,
18 Article – Family Law
19 Section 5–326(a)(1)
20 Annotated Code of Maryland
21 (2006 Replacement Volume and 2010 Supplement)

22 BY repealing and reenacting, with amendments,
23 Article – Family Law
24 Section 5–326(c)
25 Annotated Code of Maryland
26 (2006 Replacement Volume and 2010 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Preamble

2 WHEREAS, Section 475(5)(c)(ii) of the federal Social Security Act mandates
3 that a court holding a permanency hearing conduct an age-appropriate consultation
4 with the child who is the subject of the hearing; and

5 WHEREAS, The federal Act does not specify how a state court must comply;
6 and

7 WHEREAS, The United States Department of Health and Human Services in
8 its Children's Bureau Manual interpreted the Act as requiring that "the child's views
9 on the child's permanency or transition plan must be obtained by the court for
10 consideration during the hearing"; and

11 WHEREAS, The United States Department of Health and Human Services also
12 opined that "information that is provided to the court regarding the child's best
13 interests alone are not sufficient to meet this requirement"; and

14 WHEREAS, The accuracy of a verbal report of the child's views provided to the
15 court by an attorney, case worker, or guardian ad litem might be questionable in some
16 instances when the child is not present to clarify the child's views for the court; and

17 WHEREAS, Even a child's demeanor and nonverbal communication might be
18 informative for the court; and

19 WHEREAS, There is no standardization in the way that Maryland courts
20 interpret or attempt to comply with the federal Act mandating a consultation with the
21 child who is the subject of a permanency hearing; now, therefore,

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
23 MARYLAND, That the Laws of Maryland read as follows:

24 **Article – Courts and Judicial Proceedings**

25 3–823.

26 (b) (1) The court shall hold a permanency planning hearing to determine
27 the permanency plan for a child:

28 (i) No later than 11 months after a child committed under
29 § 3–819 of this subtitle or continued in a voluntary placement under § 3–819.1(b) of
30 this subtitle enters an out-of-home placement; or

31 (ii) Within 30 days after the court finds that reasonable efforts
32 to reunify a child with the child's parent or guardian are not required based on a
33 finding that a circumstance enumerated in § 3–812 of this subtitle has occurred.

1 (2) For purposes of this section, a child shall be considered to have
2 entered an out-of-home placement 30 days after the child is placed into an
3 out-of-home placement.

4 (3) If all parties agree, a permanency planning hearing may be held on
5 the same day as the reasonable efforts hearing.

6 (c) (1) On the written request of a party or on its own motion, the court
7 may schedule a hearing at any earlier time to determine a permanency plan or to
8 review the implementation of a permanency plan for any child committed under
9 § 3-819 of this subtitle.

10 (2) A written request for review shall state the reason for the request
11 and each issue to be raised.

12 (h) (1) (i) Except as provided in subparagraphs (ii) and (iii) of this
13 paragraph, the court shall conduct a hearing to review the permanency plan at least
14 every 6 months until commitment is rescinded or a voluntary placement is terminated.

15 (ii) The court shall conduct a review hearing every 12 months
16 after the court determines that the child shall be continued in out-of-home placement
17 with a specific caregiver who agrees to care for the child on a permanent basis.

18 (iii) 1. Unless the court finds good cause, a case shall be
19 terminated after the court grants custody and guardianship of the child to a relative or
20 other individual.

21 2. If the court finds good cause not to terminate a case,
22 the court shall conduct a review hearing every 12 months until the case is terminated.

23 3. The court may not conclude a review hearing under
24 subparagraph 2 of this subparagraph unless the court has seen the child in person.

25 (k) At least every 12 months at a hearing under this section, the court shall
26 consult on the record with the child [in an age-appropriate manner] **BY ONE OF THE**
27 **FOLLOWING METHODS:**

28 **(1) IF THE CHILD'S PLACEMENT IS WITHIN THE STATE OR WITHIN**
29 **A REASONABLE DISTANCE FROM THE COURTHOUSE AND THE CHILD'S**
30 **TRANSPORTATION CAN BE FEASIBLY ARRANGED, THE COURT MAY CONVERSE**
31 **WITH THE CHILD DURING THE HEARING IF THE CHILD IS VERBAL, OR THE**
32 **CHILD'S CARETAKERS IF THE CHILD IS NOT VERBAL;**

33 **(2) IF THE CHILD'S PLACEMENT IS OUTSIDE THE STATE OR NOT**
34 **WITHIN A REASONABLE DISTANCE FROM THE COURTHOUSE OR THE CHILD'S**

1 TRANSPORTATION CANNOT BE FEASIBLY ARRANGED, THE COURT MAY USE
2 VIDEO CONFERENCING TO CONVERSE WITH THE CHILD DURING THE HEARING;

3 (3) IF THE CHILD IS SO MEDICALLY FRAGILE THAT IT IS
4 PHYSICALLY IMPOSSIBLE FOR THE CHILD TO BE TRANSPORTED TO THE COURT,
5 THE COURT MAY VISIT THE CHILD AT THE CHILD'S PLACEMENT; OR

6 (4) IF THE VIEWS OF THE CHILD CANNOT BE FEASIBLY OBTAINED
7 BY ANY OF THE METHODS DESCRIBED IN ITEM (1), (2), OR (3) OF THIS
8 SUBSECTION, THE COURT MAY USE A VIDEO CONNECTION DURING THE HEARING
9 TO OBSERVE THE CHILD ENGAGED IN REGULAR ACTIVITIES OF DAILY LIVING AT
10 THE CHILD'S PLACEMENT.

11 Article – Family Law

12 5–326.

13 (a) (1) A juvenile court shall hold:

14 (i) an initial guardianship review hearing as scheduled under §
15 5–324(b)(1)(vi) of this subtitle to establish a permanency plan for the child; and

16 (ii) at least once each year after the initial guardianship review
17 hearing until the juvenile court's jurisdiction terminates, a guardianship review
18 hearing.

19 (c) At least every 12 months at a hearing under this section, the court shall
20 consult on the record with the child [in an age–appropriate manner] **BY ONE OF THE**
21 **FOLLOWING METHODS:**

22 (1) IF THE CHILD'S PLACEMENT IS WITHIN THE STATE OR WITHIN
23 A REASONABLE DISTANCE FROM THE COURTHOUSE AND THE CHILD'S
24 TRANSPORTATION CAN BE FEASIBLY ARRANGED, THE COURT MAY CONVERSE
25 WITH THE CHILD DURING THE HEARING IF THE CHILD IS VERBAL, OR THE
26 CHILD'S CARETAKERS IF THE CHILD IS NOT VERBAL;

27 (2) IF THE CHILD'S PLACEMENT IS OUTSIDE THE STATE OR NOT
28 WITHIN A REASONABLE DISTANCE FROM THE COURTHOUSE OR THE CHILD'S
29 TRANSPORTATION CANNOT BE FEASIBLY ARRANGED, THE COURT MAY USE
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1 **(4) IF THE VIEWS OF THE CHILD CANNOT BE FEASIBLY OBTAINED**
2 **BY ANY OF THE METHODS DESCRIBED IN ITEM (1), (2), OR (3) OF THIS**
3 **SUBSECTION, THE COURT MAY USE A VIDEO CONNECTION DURING THE HEARING**
4 **TO OBSERVE THE CHILD ENGAGED IN REGULAR ACTIVITIES OF DAILY LIVING AT**
5 **THE CHILD'S PLACEMENT.**

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
7 October 1, 2011.